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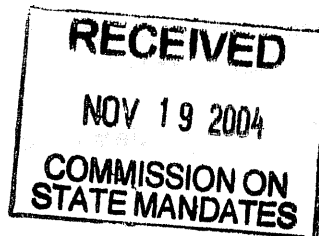
SENATOR
DENISE MORENO DUCHENY
FORTIETH SENATE DISTRICT



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FOR THE 21ST CENTURY
MEMBER, COMMISSION OF
THE CALIFORNIAS

November 19, 2004

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA. 95814



RE: Initial Briefing For Case No.: 04-RL-3929-05
Regional Housing Needs Determination- Councils Of Governments

Dear Ms. Higashi,

As Chair of the Senate Housing and Community Development Committee and a member of the Senate Budget Subcommittee that adopted trailer bill language asking the commission to reconsider the regional housing needs determination mandate, I am writing to share my perspectives on this issue.

For years, the regional housing needs determination process (the RHNA process) undertaken by councils of governments has been considered a reimbursable state mandate. When possible, it was funded through the annual budget act. However, in many years it was not possible to fund the mandate, and it was either suspended or deferred. Given that the state continues to face significant budget deficits for the foreseeable future, I strongly believe that it is not realistic to expect on-going General Fund appropriations through the budget for this purpose, even though the RHNA process is a critical component to ensuring that each community is planning for its housing needs.

Moreover, it is my understanding that case law issued since the commission's initial determination, specifically *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, et al.* (1996) 43 Cal.App.4th 1188; 51 Cal. Rptr. 2d 100 and *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; 64 Cal. Rptr.2d 270, makes councils of government ineligible for reimbursement through the state mandate process.

For these reasons, the Legislature this year enacted legislation to shift the RHNA process to a fee-funded activity. Government Code 65584.1 (as enacted by SB 1102 and amended by SB 1777) expressly provides councils of governments with the authority to

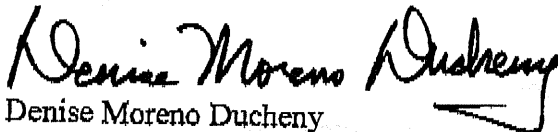
assess fees to local governments for the costs of the RHNA process, and for local governments in turn to pass these costs on to developers as fees.

To the extent that the RHNA process is a reimbursable mandate at all, this fee authority was intended to meet the test of Government Code Section 17556(d) that the commission shall not find costs mandated by the state if "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

While there is clearly a mandate on councils of governments to perform the distribution of the regional housing need, it should not be a reimbursable mandate.

Thank you for your consideration of these comments.

Sincerely,



Denise Moreno Ducheny
Chair, Senate Housing and Community Development Committee